This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).

STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1606

State of Minnesota,
Respondent,

vs.

George W. Rogers,
Appellant.

Filed November 18, 2008
Affirmed
Stoneburner, Judge

Becker County District Court
File No. KX05339

Lori Swanson, Minnesota Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael Fritz, Becker County Attorney, Tammy Merkins, Assistant County Attorney, Lincoln Professional Center, Box 476, Detroit Lakes, MN 56502-0476 (for respondent)

Lawrence J. Hammerling, Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and Stauber, Judge.

U N P U B L I S H E D   O P I N I O N

STONEBURNER, Judge

On appeal from conviction of felony nonsupport of a child, appellant, a member of the Minnesota Chippewa Tribe enrolled at White Earth, argues that Becker County lacks subject-matter jurisdiction to prosecute him for this offense. Because the offense did not arise on the reservation, we conclude that the state had subject-matter jurisdiction and affirm.

FACTS

Appellant George W. Rogers, an enrolled member of the Chippewa Tribe at White Earth, is the adjudicated father of J.M. who was born on August 1, 1993. The 1994 judgment adjudicating paternity required Rogers to reimburse Becker County for amounts expended in connection with J.M.'s birth and additional aid provided on his behalf, and established Rogers's ongoing child support obligation in the amount of $372 per month beginning December 1, 1994.

Rogers has a sporadic work history that coincides with his sporadic payment of child support. In August 2003, Rogers was personally served at his Minneapolis address with an order to show cause requiring him to appear in Becker County District Court and show why he should not be held in contempt of court for failing to pay child support. Rogers appeared and stipulated that he was in willful civil contempt for failure to pay child support. The district court accepted that stipulation as well as a stipulation between Rogers and J.M.'s mother reducing Rogers's support obligation to $151 per month. Rogers did not make any subsequent child-support payments.

Subsequently, Becker County charged Rogers with felony nonsupport of a child from December 20, 1994, through March 4, 2005, in violation of Minn. Stat. § 609.375, subd. 2a(2) (2004). Rogers moved to dismiss for lack of subject-matter jurisdiction based on his assertion that he was living on the White Earth Reservation at the time he was charged. But Rogers then stipulated that from 1995 to April 2005, he "resided off the Reservation at 3450 26th Avenue, S., Minneapolis, MN 55417." The district court found subject-matter jurisdiction based on the fact that the offense was not committed on the reservation because, for the period charged, Rogers was not living on the reservation.

Before trial, the state amended the complaint, limiting the period of nonsupport to March 1, 2002, through March 4, 2005. A jury found Rogers guilty of felony nonsupport and this appeal, challenging only subject-matter jurisdiction, followed.

D E C I S I O N

This court reviews jurisdictional issues de novo. *State v. R.M.H.*, 617 N.W.2d 55, 58 (Minn. 2000). Despite limits on the state's jurisdiction to enforce its laws against Indians for offenses committed in Indian country, there is no dispute that the state has the authority to enforce its laws in a nondiscriminatory fashion against Indians for offenses that occur off the reservation. *State v. Butcher*, 563 N.W.2d 776, 781 (Minn. App. 1997) (holding that because offenses committed by an enrolled member of the White Earth Band of Chippewa were committed off the White Earth Reservation, state had jurisdiction to charge him with obstructing legal process and driving after cancellation), *review denied* (Minn. Aug. 5, 1997); *Red Lake Band of Chippewa Indians v. State*, 311 Minn. 241, 247, 248 N.W.2d 722, 726 (1976) (stating the principle that the state has

"authority to require that persons subject to the jurisdiction of the Red Lake Band submit to the governing authority of the State of Minnesota with respect to activities occurring within the territorial limits of Minnesota and *without* the territorial boundaries of the reservation").

In this case, Rogers stipulated that he resided off of the reservation from 1995 to April 2005. He did not withdraw from that stipulation prior to trial, but argues on appeal that because he testified at trial that he was on the reservation for part of this period, working, living off the land, or in jail, and because he was living on the reservation at the time he was charged with the offense, the state is deprived of jurisdiction. We disagree.

The elements of felony nonsupport of a child under Minn. Stat. § 609.375, subds. 1, 2a (2004) are (1) a legal obligation to provide child support; (2) a knowing failure to pay the child support; and (3) the failure to pay child support occurs for more than 180 days or arrearages are more than nine times the monthly obligation. Rogers does not dispute that he was living in Minneapolis when the obligation to pay child support arose, and the first element of the offense plainly occurred off the reservation.

The state argues that because Rogers's legal obligation to provide child support arose off the reservation, the state has continuing jurisdiction over Rogers to pursue felony nonsupport. The argument is based on the state's continuing subject-matter jurisdiction to enforce the child-support obligation under Minn. Stat. § 257.67, subd. 3 (2004), which makes willful failure to obey the judgment or order of the court a contempt of court and provides that all remedies for the enforcement of judgments are applicable.

But a state's jurisdiction over Indians is governed by federal law, and we conclude that the state contempt law cannot confer jurisdiction where federal law would prohibit jurisdiction.

The state relies on *Anderson v. Beaulieu*, in which this court held that the state has jurisdiction to adjudicate the child-support obligation of an enrolled tribal member living on the reservation. 555 N.W.2d 537, 538–40 (Minn. App. 1996) (holding that Beaulieu had subjected himself to state jurisdiction by being employed off of the reservation when the state initiated the action and by "voluntarily agree[ing] to a paternity blood test"). The fact that Beaulieu terminated his employment off the reservation midway through the proceedings was held not to deprive the state of jurisdiction to adjudicate the support obligation. *Id*. at 540.

We conclude that *Beaulieu* is not determinative in this case because no separate criminal charge was brought against Beaulieu. We conclude that all of the elements of a charged criminal offense must have occurred off the reservation in order for the state to assert jurisdiction on the basis that the offense occurred off the reservation. *See State v. Stickney*, 118 Minn. 64, 67, 136 N.W. 419, 420 (1912) (stating in the context of determining whether the crime charged was committed in Minnesota or in Wisconsin the relevant question is "[w]as the crime charged committed in this state under the allegations of the indictment" even though the completion of the crime occurs in another state). *Stickney* involved the crime of inducing, enticing, and procuring a woman to enter a house of ill fame. *Id*. at 65, 136 N.W. at 419. Minnesota was held to have jurisdiction because all of defendant's acts constituting the crime (inducing, enticing, and procuring)

were found to have been committed in Minnesota even though the house of ill fame was located in Wisconsin. *Id*. at 67, 136 N.W. at 420.

Similarly, in this case, all of the omissions constituting the crime of nonsupport of a child occurred off the reservation. Rogers does not dispute that he knowingly failed to pay child support or that, for the entire period charged, his arrearages exceeded nine times his monthly support obligation. That Rogers worked on or was staying on the reservation for some of the time after the elements of the offense were first committed does not defeat or limit jurisdiction for Rogers's continuing commission of felony nonsupport of a child.

The fact that J.M. and J.M.'s mother resided on the White Earth Reservation also does not limit the state's jurisdiction. In *Stickney*, the Minnesota Supreme Court held that the state had jurisdiction even though the crime was completed in another state. *Id*. Likewise, the state has jurisdiction here even though the crime was completed on the White Earth Reservation when J.M.'s mother, who was residing on the reservation, did not receive child-support payments from Rogers.

We also find no merit in Rogers's assertion that the state lacked subject-matter jurisdiction because he was living on the reservation at the time he was charged. Rogers has no authority to support this proposition, and it is contrary to the case law cited above supporting state jurisdiction over matters that occur off of the reservation.

For the first time on appeal, Rogers argues that because J.M. and J.M.'s mother live on the reservation, venue is appropriate in the tribe. Because the issue of venue was not raised in the district court, we decline to address it on appeal. *See State v. Roby*, 547

N.W.2d 354, 357 (Minn. 1996) (stating that this court will generally not consider matters not argued to and considered by the district court). We note, however that the record shows that the mother and child reside in Becker County making venue in Becker County appropriate under Minn. Stat. § 609.375, subd. 5 (2006) (stating that a person who violates the statute may be prosecuted and tried in the county in which the support obligor resides or in the county in which the obligee or the child resides).

Because the basis of the state's jurisdiction is that the offense charged occurred off of the reservation, we do not analyze whether felony nonsupport of a child is a criminal/prohibitory or civil/regulatory offense.

Affirmed.